

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0400P

Individual Income Tax
For the Calendar Year 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayers protest the penalty assessed for failure to file their individual income tax return and remit the tax due by the appropriate date.

STATEMENT OF FACTS

The taxpayers filed their individual income tax return for the calendar year 2004 after the due date. A portion of the calculated amount of tax due was remitted with the return. Accordingly, the department assessed a penalty for the taxpayer's failure to timely remit the full amount of tax due. In the letter of protest, the taxpayer requested that the penalty be abated due to reasonable cause.

I. Tax Administration – Penalty

The return in question was due on April 15, 2005. It was filed on August 31, 2005. The taxpayer asserts that the penalty should be waived because he was unemployed for five months during 2005 due to the dissolution of his corporation. The department acknowledges the hardship created by the dissolution of one's employer. However, the department also notes that the taxpayer failed to have an adequate amount of Indiana income tax withheld from his salary and failed to remit estimated tax during 2004. Had the taxpayers remitted an appropriate amount of estimated tax, this matter could likely have been avoided.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayers have not established that their failure to timely file the return in question and pay the appropriate tax was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.